

### **3. REMARKS**

#### **RESPONSE TO CLAIM OBJECTIONS:**

The Examiner objected to Claim 57 because it made reference to a “hollow interior” while the parent claim referred to a “space” thus creating a dependent claim with no antecedent basis. In response to this objection, Applicant has amended Claim 57 to use the term “space” so that the dependent claim has the proper antecedent basis. Therefore, Claim 57, as amended, effectively overcomes the objection, and should be allowed to issue.

#### **RESPONSE TO CLAIM REJECTIONS:**

The Examiner rejected Claim 52 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 3,473,339 issued to Schlafly. The Examiner states:

Schlafly discloses a protector including an elongate member having sidewalls defining a space therebetween, with a closed upper end and an open lower end.

Applicant respectfully traverses the rejection of Claim 52, as amended, as being anticipated by Schlafly. As stated by the Examiner, Schlafly describes U-shaped metal conduit having 3 closed sides and an open side. Claim 52 of the present invention discloses a conduit made of a semi-rigid material having two sides that taper together at both ends, in which one end is selectively openable to insert cables therein, and which can then be closed after insertion of cables to provide for protection of the cables inserted therein (application, p. 25, lns 8-10). Schlafly discusses placing the cable on top of a piece of packing material, then placing the rigid u-shaped metal channel over both the cable and packing material and applying force with a sledge hammer to insert the unit of the packing material, cable and channel into the trough. This process requires multiple steps and the use of a high level of force. Also,

because the intention is to have the top of the u-shaped channel flush with the surface of the sidewalk, a high degree of accuracy is needed in cutting the width and depth of the trough so the top of the channel is flush with the level of the sidewalk after installation. The present invention, on the other hand, is intended to be inserted or buried within a narrow trough, and the need for a high level of accuracy in cutting the trough is eliminated, as the exact position of the protector of the present invention within the trough is not critical. Additionally, in the present invention, after the cables are inserted in the protector, it can be completely closed to protect against moisture, cutting or other damage to the cables therein. Nothing in Schlafly describes or suggests a single unit protector that can be opened to receive cables and then closed after insertion of the cables for to fully enclose the cables for protection thereof, as in the present invention. Therefore, Claim 52, as amended, effectively overcomes the 35 U.S.C. §102(b) anticipation by Schlafly, and Claim 52 should be allowed to issue. Because Claims 53-58 depend from Claim 52, these claims should also be allowed to issue.

The Examiner rejected Claim 52 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,962,809 to Duvall. The Examiner states:

Duvall discloses a fiber optic cable protector for underground installation including an elongate member having sidewalls defining a space therebetween, with a closed upper end and an open lower end.

Applicant respectfully traverses the rejection of Claim 52, as amended, as being anticipated by Duvall. Duvall describes U-shaped conduit having an open side. Claim 52 of the present invention discloses a conduit made of a semi-rigid material having two sides that taper together at both ends, in which one end is selectively openable to insert cables therein, and which can then be closed after insertion of cables to provide for protection of the cables inserted therein (application, p. 25, lns 8-10). The invention of Duvall protects the cables in

the conduit on only 3 sides, leaving an open side into which moisture can come in contact with the cables, or the cables can be damaged or cut. In the present invention, after the cables are inserted in the protector, it can be completely closed to protect against moisture, cutting or other damage to the cables therein from all sides. Nothing in Duvall describes or suggests a single unit protector that can be opened to receive cables and then closed after insertion of the cables for protection of the cables therein, as in the present invention. Therefore, Claim 52, as amended, effectively overcomes the 35 U.S.C. §102(b) anticipation by Duvall, and Claim 52 should be allowed to issue. Because Claims 53-58 depend from Claim 52, these claims should also be allowed to issue.

The Examiner rejected Claims 52 and 56-58 under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,668,912 to Keller. The Examiner states:

Keller discloses a fiber optic cable protector comprising an elongate member having sidewalls defining a space therebetween with a closed upper end and an open lower end.

Applicant respectfully traverses the rejection of Claim 52, as amended, as being anticipated by Keller. Keller discloses a continuous cable jacket encompassing a metallic sheath, both of which surround a support open on one side into which cables are inserted. The cable jacket and metallic sheath are continuous and fully enclose the support and cables. Cables must be premade in the correct configuration at the factory. The cable jacket and sheath cannot be opened and then re-closed. Nor can any additional cables can be inserted in the cable jacket of Keller. In the present invention, the protector can be opened at the actual installation site, and the desired cables inserted on-site, including cables that may already be installed at the site. Additionally, in the present invention, after the cables are inserted in the protector, it can be completely closed to protect against moisture, cutting or other damage to the cables

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therein, and if necessary, re-opened later. Nothing in Keller describes or suggests a single unit cable protector that can be opened to receive a variety of cables on site and then closed after insertion of the cables for protection of the cables therein, as in the present invention. Therefore, Claim 52, as amended, effectively overcomes the 35 U.S.C. §102(b) anticipation by Keller, and Claim 52 should be allowed to issue. Because Claims 53-58 depend from Claim 52, these claims should also be allowed to issue.

The Examiner rejected Claims 53 and 54 under 35 U.S.C. §103(a) as being unpatentable over Duvall in view of US Patent 4,820,007 to Ross. The Examiner states:

Duvall does not disclose a tapered ridge shape for the upper and lower ends. Ross discloses an optical fiber cable closure for underground installation having tapered upper and lower ends and teaches that this shape resists crushing loads when buried...It would have been obvious to a person having ordinary skill in the art to provide the Duvall channel member with a tapered shape as taught by Ross in order to further protect the enclosed cables.

Applicant respectfully traverses this rejection of Claims 53 and 54 as being unpatentable over Duvall in light of Ross. As explained above, Duvall describes U-shaped conduit having an open side. The invention of Duvall protects the cables in the conduit on only 3 sides, leaving an opening into which moisture can come in contact with the cables, or the cables can be cut or damaged. Ross discloses a closure for use surrounding a splice in cables, not for the entire length of a cable run. Further the closure of Ross is made of two separate pieces, which after they are put together are wrapped with tape and held together with a cable tie (col. 6, lns 42-47). Also, Ross discloses injecting a capsulating material into the closure to fix or cement in place the splice therein. The present invention, on the other hand, is a one piece unit intended for use as a conduit for various lengths of cable, not just splices, and is intended to

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be closable and re-openable for access to the cables at a later time, and if space allows, for insertion of additional cables. The closure of Ross is intended only to secure in place a splice in a length of cable; there is no intent for the closure of Ross to be reopened, nor can any additional activity to take place within the closure at a subsequent time. Applicant has amended Claim 52 to indicate that an end of the closure can be opened and closed selectively for the insertion of cables. It would not have been obvious to one of ordinary skill in the art to take the 3-sided cable sheath of Duvall and combine it with an ovoid shape splice protector for sealing a slice together and produce a two-sided cable protector that is selectively openable at one end for insertion of various cables, said protector being subsequently closable to protect the cables therein. Therefore, Claim 52, as amended, and consequently Claims 53 and 54 which depend therefrom effectively overcome the 35 U.S.C. §103(a) obviousness rejection based on Duvall in light of Ross, and therefore Claims 53 and 54 should be allowed to issue.

In light of the factors discussed above, it is respectfully requested that the rejection of Claims 52-58 be reconsidered and withdrawn, as amended Claim 52 is clearly novel, and the remaining claims depend from independent claims 52 or 65. It is further respectfully requested that the rejection of Claims 53 and 54 under 103(a) as being unpatentable over Duvall et al. in view of Ross et al. be reconsidered and withdrawn, as amended Claims 52 and 65 are clearly distinguishable from and patentable over the cited references, and therefore dependent Claims 53 and 54 are also distinguishable from and patentable over the cited references.

Applicant has now made an earnest attempt to place this application in condition for allowance. Therefore, Applicant respectfully requests, for the reasons set forth herein and for other reasons clearly apparent, full allowance of independent Claim 52, as amended, Claims

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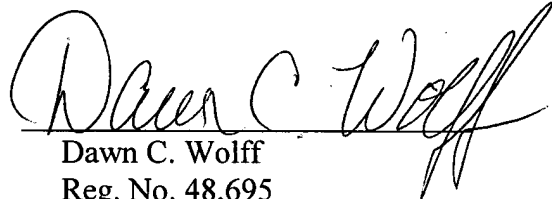
53-58 which depend therefrom, and new claims 65-69, so that the application may be passed to issue.

Applicant does not believe any additional fees are due; however, in the event that any additional fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-2180 of Paul Storm, P.C. Should the Examiner have any questions or desire clarification of any sort, or deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

STORM & HEMINGWAY, L.L.P.

Date: 2-23-2004

A handwritten signature in dark ink, appearing to read "Dawn C. Wolff", is written over a horizontal line.

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